

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

Marvin Gerber and Dr. Miriam Brysk

Plaintiff,

vs.

Case No.2:19-cv-13726
Hon. Victoria Roberts

Henry Herskovitz, Gloria Harb, Tom Saffold,
Rudy List, Chris Mark, Deir Yassin Remembered, Inc.,
Jewish Witnesses for Peace and Friends, The City of Ann Arbor,
Ann Arbor Mayor Christopher Taylor, in his official
And individual capacities, Ann Arbor Community Services
Administrator Derek Delacourt, in his official and individual
capacities, Ann Arbor City Attorney Stephen Postema, in his
official and individual capacities, and Senior Assistant
City Attorney Kristen Larcom, in her official and individual capacities.

Defendants, Jointly and Severally.

CORRECTED

**DEFENDANTS Herskovitz, Harb, Saffold, List, Mark and Jewish Witness
for Peace and Friends' RESPONSE TO MOTION TO FILE SUR REPLY RE
MOTION TO SET ASIDE DEFAULT**

In response to Plaintiffs' Motion to File a Sur Reply to these Defendants'
Motion to Set Aside the Default Against Jewish Witness for Peace (JWFP),
Defendants Herskovitz, Harb, Saffold, List, Mark and Jewish Witness for Peace
and Friends say as follows:

1. Mr. Susselman left a voice mail message for undersigned counsel seeking concurrence at 9:12 am Monday 2/24/20 before filing his motion at 9:53 am. It does not appear that he attempted to contact ~~Mr. Davis~~ or Mr. Shea. He did leave a voice mail for Mr. Davis at the same time, which was initially overlooked by Mr. Davis, but confirmed when the error was pointed out by Mr. Susselman, at whose request this corrected document is being filed.
2. Defendants Herskovitz et al., (the “protester defendants”) do not concur.
3. Plaintiffs improperly filed the pleading they seek leave to submit as an exhibit which should be stricken.
4. If Plaintiffs’ motion for sur-reply is granted, the “protester defendants” and JWFP request that they be allowed to file a sur-sur reply, particularly in light of the fact that the movants carry the burden which is why they traditionally have the last word in motion practice and oral argument.

WHEREFORE Defendants Herskovitz, Harb, Safford, List, Mark and Jewish Witness for Peace respectfully request this Honorable Court deny the Plaintiffs’ Motion to file a Sur Reply or, if said motion is granted, then also permit these Defendants to file a Sur Sur Reply of at least the same length.

Respectfully submitted,

By: /s/Cynthia Heenan
Cynthia Heenan, P53664
***Attorney for Defendants Herskovitz, Harb,
Saffold, List, Mark and Jewish Witness for
Peace and Friends***
220 Bagley St., Ste. 740
Detroit, MI 48226
(313) 961-2255/Fax: (313) 922-5130
Heenan@ConLitPC.Com

Dated: 2/26/2020

CERTIFICATE OF SERVICE

I hereby certify that on 2/26/20, I electronically filed **CORRECTED** ***Defendants' Response to Plaintiffs' Motion to File Sur Reply re Motion to Set Aside Default***, along with this ***Certificate of Service*** with the Clerk of the Court for the Eastern District of Michigan, using ECF system, which will send notification of such filing to the registered participants of the ECF system as listed on the Court's Notice of Electronic Filing.

s/ Cynthia Heenan
Cynthia Heenan
Constitutional Litigation Associates, P.C.
Info@ConLitPC.Com

C:\Users\cindy\Dropbox\CLA Cases\Herskovitz, et al\Pldgs\corrected Def Resp to m-file sur reply.docx